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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

JUL 16 2003

File: EAC-01-086-50431 Office: Vermont Service Center Date:

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER: [redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a religious organization. It seeks classification of the beneficiary as a special immigrant minister pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(4), in order to employ him as a minister.

The director denied the petition finding that the petitioner failed to establish that the beneficiary had been continuously carrying on the vocation of a minister for at least the two years preceding the filing of the petition.

On appeal, the petitioner, through counsel, submitted a brief stating, in part, that the position offered is that of a "Full time Church Minister," that the beneficiary's training qualifies him for such position, and that the beneficiary has been a member of the ministries since 1997.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
>
> (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
>
> (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The beneficiary in this matter is described as a native and citizen of Kenya who was last admitted to the United States on January 20, 1996 as a B-2 visitor. The record reflects that he has resided in the United States in an unlawful status since expiration of his authorized stay.

In order to establish eligibility for classification as a special immigrant minister, the petitioner must satisfy several eligibility requirements.

The petitioner must establish that he is qualified as a minister as defined in these proceedings.

8 C.F.R. § 204.5(m)(2) states, in pertinent part, that:

> *Minister* means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

In this case, the petitioner has stated that the beneficiary was trained under Pastors [redacted] and [redacted] (officials of the petitioner), ordained, and installed as a deacon on April 29, 2001. The petitioner provided a document entitled "The Role of Deacons and Elders in the Church," and a "Certificate of Completion," signifying that the beneficiary was made a "Church Minister" on October 7, 1998, after having successfully completed two years of "Church Ministerial Training." The petitioner did not explain the procedure whereby one becomes a minister before becoming a deacon.

Other evidence of record consists of a letter from Pastor [redacted] who stated that the beneficiary joined the church in November 1997. In another letter dated November 11, 2001, Pastor [redacted] indicated that the beneficiary became an employee of the Ministry in November 1998. The record, therefore, is unclear as to when the beneficiary became a part of the organization and under what circumstances. Further, although requested by the Bureau, the petitioner has not submitted a detailed description of the two-year training program, including evidence of any denominational affiliation, or evidence of course work undertaken by the beneficiary.

On review, it must be concluded that the record is insufficient to establish that the beneficiary is a qualified minister of any religious denomination. The petitioner has not shown that the

beneficiary was ordained by any recognized religious denomination and has not submitted proof that he is authorized to conduct the duties of a clergyman. As stated in the controlling regulation, a lay preacher is not considered a minister for the purpose of special immigrant classification. In this case, it must be concluded that the actions of the petitioner appointing the beneficiary as a minister, apparently unaffiliated with any recognized religious denomination, is not sufficient to establish that he is a qualified minister of religion within the meaning of section 101(a)(27)(C) of the Act.

The petitioner also must establish that the beneficiary was continuously carrying on the vocation of a minister for at least the two years preceding the filing of the petition.

8 C.F.R. § 204.5(m)(1) states, in pertinent part, that:

> All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

In the case of special immigrant ministers, the alien must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought and must intend to be engaged solely in the work of a minister of religion in the United States. Matter of Faith Assembly Church, 19 I&N 391 (Comm. 1986).

The petition was filed on January 24, 2001. Therefore, the petitioner must establish that he had been continuously and solely carrying on the vocation of a minister of religion since at least January 25, 1999.

In this case, as noted above, the record does not establish that the beneficiary is a qualified minister. Furthermore, there is no indication that he has been continuously and solely serving as a minister since January 1999. The record shows that, based on Federal IncomeTax Returns,the beneficiary was employed as a full-time machinist during the qualifying period.

The petitioner also must demonstrate that a qualifying job offer has been tendered.

Regulations at 8 C.F.R. § 204.5(m)(4) state, in pertinent part, that:

> *Job offer.* The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or

> remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

In this case, the petitioner has not identified the terms of remuneration or shown that the beneficiary would be solely carrying on the vocation of a minister in the United States. Therefore, the petitioner has not demonstrated a qualifying job offer from the new church.

A petitioner also must demonstrate the church's ability to pay the proffered wage.

8 C.F.R. § 204.5(g)(2) states, in pertinent part, that:

> Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

The petitioner submitted an unaudited financial statement as proof of the church's financial resources. These documents do not satisfy the regulatory requirement. The petitioner has not furnished the church's annual reports, Federal Tax returns, or audited financial statements. Therefore, the petitioner has not satisfied the documentary requirement of this provision.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.